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STATE OF WASHINGTON

WASHINGTON STATE LIQUOR CONTROL BOARD

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**PLAINTIFF'S
EXHIBIT**

CASE
NO. **CV04-0360P**

EXHIBIT
NO. **126**

RB 00715

Sec. 9. RCW 66.28.180 and 1985 c 226 S 4 are each amended to read as follows:

It is unlawful for a person, firms, or corporation holding a certificate of approval issued under RCW 66.24.270 or 66.24.206, a beer wholesaler's license or a brewer's license, a beer importer's license, a domestic winery license, a wine importer's license, or a wine wholesaler's license within the state of Washington to modify any prices without prior notification to and approval of the board.

(1) Intent. The following sections are enacted pursuant to the authority of this state under the Twenty-First Amendment to the U.S. Constitution to promote the public's interest in fostering the orderly and responsible distribution of malt beverages and wine towards effective control of consumption; to promote the fair and efficient three-tier system of distribution of such beverages; and to confirm existing board regulations as the clear expression of state policy to regulate the manner of selling and pricing of wine and malt beverages by licensed suppliers and wholesalers.

(2) Beer and Wine Wholesale price posting. (a) Every beer, wholesaler shall file with the board at its office in Olympia a price posting showing the wholesale prices at which any and all brands of beer and wine sold by such beer and wine wholesaler shall be sold to retailers within the state.

(b) Each price posting shall be made on a form prepared and furnished by the board or a reasonable facsimile thereof, and shall set forth:

(i) All brands, types, packages and containers of beer offered for sale by such beer wholesaler.

(ii) The wholesale prices thereof to retail licensees, including allowances, if any, for returned empty containers.

(c) No beer or wine wholesaler shall sell or offer to sell any package or container of beer or wine to any retail licensee at a price differing from the price for such package or container as shown in the price posting filed by the beer wholesaler and then in effect, according to regulations now existing or hereafter adopted by the board.

(d) Quantity discounts are prohibited. No price shall be posted which is below acquisition cost plus ten percent of acquisition cost. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition cost as a minimum mark-up over cost and to modify such percentage by regulation of the board, except such percentage shall be not less than ten percent.

(e) Wholesale prices on a "close-out" item shall be accepted by the board if the item to be discontinued has been listed on the state market for a period of at least six months, and upon the further condition that the wholesaler who posts such a close-out price shall not restock the item for a period of one year following the first effective date of such close-out price.

(f) The board may reject any price posting which it deems to be in violation of this or any other regulation or portion thereof which would tend to disrupt the orderly sale and distribution of beer and wine. Whenever the board shall reject any posting the licensee submitting said posting may be heard by the board and shall have the burden of showing that said posting is not in violation of regulation and/or does not tend to disrupt the orderly sale and distribution of beer and wine. Thereupon if said posting is accepted it shall become effective at the time fixed by the board. If said posting is rejected, the last effective posting shall remain in effect until such time as an amended posting is filed and approved, in accordance with the provisions of this regulation.

(g) All price postings filed as required by this regulation shall at all times be open to inspection to all trade buyers within the state of Washington and shall not within any sense be considered confidential.

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(h) Any beer or wine wholesaler or employee authorized by his wholesaler-employer may sell beer at the wholesaler's posted prices to any Class A, B, D, E, H, or G licensee upon presentation to such wholesaler or employee at the time of purchase of a special permit issued by the board to such licensee.

(i) Every Class A, B, D, E, H, or G licensee upon purchasing any beer from a wholesaler, shall immediately cause such beer to be delivered to his licensed premises, and he shall not thereafter permit such beer to be disposed of in any manner except as authorized by his licensee.

(ii) Beer sold as provided herein shall be delivered by such wholesaler or his authorized employee either to such retailer's licensed premises or directly to such retailer at the wholesaler's licensed premises. Provided, however, That a wholesaler's prices to retail licensees shall be the same at both such places of delivery.

(3) Beer and wine suppliers' price filings, contracts and memoranda. (a) Every licensed brewer and every domestic winery shall file with the board at its office in Olympia a copy of every written contract and a memorandum of every oral agreement which such brewer may have with any beer wholesaler, which contracts or memoranda shall contain a schedule of prices charged to wholesalers for all items, all terms of sale, including all regular and special discounts, all advertising, sales and trade allowances and incentive programs, all commissions, bonuses or gifts and any and all other discounts or allowances. Whenever changed or modified such revised contracts or memoranda shall forthwith be filed with the board as provided in this regulation.

Each price schedule shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth all brands, types, packages and containers of beer offered for sale by such licensed brewer; all additional information required may be filed as a supplement to said price schedule forms.

(b) Prices filed by a licensed brewer or domestic winery shall be uniform prices to all wholesalers on a statewide basis less bona fide allowances for freight differentials. Quantity discounts are prohibited. No price shall be filed which is below acquisition cost plus ten percent of acquisition cost. Provided, That acquisition cost plus ten percent of acquisition cost shall not apply to sales of beer or wine between a beer or wine importer who sells beer or wine to another beer or wine importer or to a beer or wine wholesaler, or to a beer or wine wholesaler who sells beer or wine to another beer or wine wholesaler; provided, further, the board is empowered ~~~

(c) No licensed brewer, domestic winery, certificate of approval holder, wine importer or wine wholesaler shall sell or offer to sell any beer or wine to any persons whatsoever in this state until copies of such written contracts or memoranda of such oral agreements are on file with the board.

(d) No licensed brewer or domestic winery shall sell or offer to sell any package or container of beer or wine to any wholesaler at a price differing from the price for such package or container as shown in the schedule of prices filed by the brewer or domestic winery and then in effect, according to regulations ~~~

(e) The board may reject any supplier's price filing, contract or memorandum of oral agreement or portion thereof which it deems to be in violation of this or any other regulation or which would tend to disrupt the orderly sale and distribution of beer or wine. Whenever the board shall reject any such price filing, contract or memorandum the licensee submitting said price filing, contract or memorandum may be heard by the board and shall have the burden of showing that the said price filing, contract or memorandum is not in violation of regulation and/or does not tend to disrupt the orderly sale and distribution of beer or wine. Thereupon if said price filing, contract or memorandum is accepted it shall become effective at a time fixed by the board.

If said price filing, contract or memorandum or portion thereof is rejected, the last effective price filing, contract or memorandum shall remain in effect

until such time as an amended price filing, contract or memorandum is filed and approved, in accordance with the provisions of this regulation.

(f) All prices, contracts and memoranda filed as required by this regulation shall at all times be open to inspection to all trade buyers within the state of Washington and shall not in any sense be considered confidential.

RB 00718